

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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CC:PSI:B04
PLR-133434-09
Date:
January 07, 2010

Decedent =
Date 1 =
Daughter =
Son =
Attorney =

Dear :

This letter responds to your authorized representative's letter, dated June 29, 2009, and subsequent correspondence, submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 2057(b)(1)(B) of the Internal Revenue Code.

Decedent died testate on Date 1, survived by Daughter and Son. Included in Decedent's gross estate are interests in residential multi-unit apartment buildings that Decedent had operated prior to Decedent's death. The executrix of Decedent's estate retained Decedent's personal attorney to prepare the federal estate tax return. Attorney was unaware of the provisions of § 2057, relating to an election to deduct certain qualified family-owned business interests. Accordingly, no election was made.

Decedent's estate tax return was examined, and additional estate tax was paid. At the close of the examination, the executrix retained additional counsel to assist in the completion of the administration of the estate. It was at that time that the failure to make the election was first discovered. The executrix now requests an extension of time to make the election.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2057(a)(1) provides that for purposes of the tax imposed by § 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate

the adjusted value of the qualified family-owned business interests of the decedent. Section 2057(a)(2) provides that the deduction shall not exceed \$675,000.

Section 2057(b)(1) provides, generally, that § 2057 shall apply to an estate if (A) the decedent was a citizen or resident of the United States, (B) the executor elects the application of this section and files the agreement referred to in § 2057(h), (C) the sum of the adjusted value of the qualified family-owned business interests plus the amount of the gifts of such interests exceeds 50 percent of the adjusted gross estate, and (D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which such interests were owned by the decedent or a member of the decedent's family, and there was material participation (within the meaning of § 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

Section 2057(b)(2) provides that the qualified family-owned business interests described in this paragraph are the interests which are included in determining the value of the gross estate, and are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of § 2032A(e)(9)).

Section 2057(e)(1) provides, generally, that the term "qualified family-owned business interest" means an interest as a proprietor in a trade or business carried on as a proprietorship, or an interest in an entity carrying on a trade or business, if: (1) at least 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family; (2) at least 70 percent of such entity is so owned by members of 2 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent's family; or (3) at least 90 percent of such entity is so owned by members of 3 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

Section 2057(i)(3)(H) provides that for purposes of § 2057, rules similar to the rules under §§ 2032A(d)(1) and (3) (relating to election; agreement) shall apply.

Section 2057(j) provides that the provisions of § 2057 shall not apply to estates of decedents dying after December 31, 2003.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001. The election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable. Section 2032A(d)(3) provides that the Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under § 2032A(d)(1) (and submits the agreement referred to in § 2032A(d)(2)) within the time prescribed therefor, the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failure to provide such information.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time of 60 days from the date of this letter is granted in which to make an election under § 2057(b)(1)(B). The election should be made on a supplemental Form 706, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether the estate qualifies for the deduction under § 2057 or whether a claim for refund may be timely filed.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

CURT G. WILSON
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes (1)

Copy of this letter (1)

cc: